

STATE OF CONNECTICUT
BOARD OF EXAMINERS FOR NURSING

Department of Public Health and Addiction Services v.

William Zajac, R.N.

Registered Nurse License No. R41384

86 Brandy Hill Road

Thompson CT 06277

CASE PETITION NO. 920221-10-010

MEMORANDUM OF DECISION

INTRODUCTION

The Board of Examiners for Nursing (hereinafter the "Board") was presented by the Department of Health Services ^{1/} (hereinafter the "Department") with a Statement of Charges dated October 6, 1992.^{2/} The Statement of Charges alleged, in three (3) counts, violations of certain provisions of Chapter 378 of the General Statutes of Connecticut by William Zajac (hereinafter the "Respondent").

The Board issued a Notice of Hearing dated May 26, 1993. (Department Exhibit 3) The hearing took place on September 23, 1993, October 20, 1993 and November 17, 1993 in Room 2-A, Legislative Office Building, Capitol Avenue, Hartford, Connecticut, and on March 10, 1994 in Room 112, National Guard Armory, Maxim Road, Hartford, Connecticut.

During the hearing on September 23, 1993 the Respondent moved that witnesses be sequestered and that the Second and Third Counts of the Statement of Charges be dismissed. (Hearing Transcript, September 23, 1993, pp. 5, 10)

^{1/} Prior to July 1, 1993 the Department of Public Health and Addiction Services was known as the Department of Health Services.

^{2/} The Statement of Charges was presented to the Board as part of a Motion for Summary Suspension on or about October 1992. The Motion for Summary Suspension was denied by the Board.

Without objection from the Department, the Board granted the Motion to Sequester Witnesses.

(Hearing Transcript, September 23, 1993, p. 7)

The Respondent's Motion to Dismiss the Second and Third Counts of the Statement of Charges was denied by the Board. (Hearing Transcript, September 23, 1994, p. 13)

The Department filed a Post Hearing Brief on March 25, 1994. The Respondent filed a Hearing Brief on March 29, 1994.

Each member of the Board involved in this decision attests that he/she was present at the hearing or has reviewed the record, and that this decision is based entirely on the record and his/her specialized professional knowledge in evaluating the evidence.

FACTS

Based on the testimony given and the exhibits offered into evidence, the Board made the following findings of fact:

1. William Zajac, hereinafter referred to as the Respondent, was issued Registered Nurse License Number R41384 on May 1, 1987 and was the holder of said license at all times referenced in the Statement of Charges. (Department Exhibit 1)
2. Pursuant to the General Statutes of Connecticut, §4-182(c), the Respondent was provided full opportunity prior to the institution of agency action to show compliance with all the terms for the retention of his license. (Department Exhibit 2)
3. The Respondent was aware of the time and location of the hearing. Department Exhibit 3 indicates that the Notice of Hearing and Statement of Charges were delivered by certified mail to the Respondent and the Respondent's attorney.

4. The Respondent was present on all dates of the hearing and was represented by counsel.
(Hearing Transcripts: September 23, 1993, p. 3; October 20, 1993, p. 2; November 17, 1993, p. 3 and March 10, 1994, p. 2)
5. The Respondent provided a verbal answer to the Statement of Charges. (Hearing Transcript, September 23, 1993, pp. 14-15)
6. That beginning on or about April 1988 the Respondent was employed as a registered nurse on Unit East One, Day Kimball Hospital, Putnam, Connecticut. The Respondent was initially employed as a primary care nurse and subsequently as a clinical coordinator. (Answer: Hearing Transcript, September 23, 1993, p. 14) (Hearing Transcript, November 17, 1993, p. 28) (Hearing Transcript, March 10, 1994, pp. 36-37)
7. That the Respondent's responsibilities as a clinical coordinator included providing nursing care to patients and supervisory functions of coordinating nursing care rendered to patients and performing performance evaluations of staff. (Hearing Transcript, March 10, 1994, pp. 37-38)
8. That during 1988, while employed as a registered nurse at Day Kimball Hospital but not while on duty, the Respondent made a telephone call to Rhonda Brouillard, R.N., who was working the 11:00 PM to 7:00 AM shift. That during this conversation the Respondent impersonated a physician. Also during this phone conversation the Respondent made a sexually inappropriate comment to Ms. Brouillard by telling her to put her hand on her breast and telling him how it felt. (Answer: Hearing Transcript, September 23, 1993, p. 14) (Department Exhibit 1) (Hearing Transcript, September 23, 1993, pp. 17-21) (Hearing Transcript, March 10, 1994, pp. 43-44)
9. That on or about 1988 while working as a registered nurse at Day Kimball Hospital, the Respondent interfered with Robin Thompson, R.N. while she was assisting a weak and debilitated patient to a geriatric chair. That the Respondent began pushing the patient and placed his hands around the patient's neck in a strangling manner. That the Respondent's actions

caused the patient to become frightened and agitated. (Department Exhibit 1) (Hearing Transcript, October 20, 1993, pp. 29-31)

10. That subsequent to 1988, while working as a registered nurse at Day Kimball Hospital, the Respondent interfered with Robin Thompson, R.N. while she was assisting an elderly cardiac patient to a geriatric chair. That the Respondent began struggling with the patient and squeezed the patient's wrist such that it caused the patient pain and caused the patient to become agitated. (Department Exhibit 1) (Respondent's Exhibit B-15) (Hearing Transcript, October 20, 1993, p. 32)
11. That subsequent to 1988 while working as a registered nurse at Day Kimball Hospital, the Respondent forceably twisted a patient's arm behind the patient's back while moving the patient into a geriatric chair. The Respondent's action caused the patient to become angry and upset. (Respondent's Exhibit B-15)
12. That the Respondent, while working as a registered nurse at Day Kimball Hospital, was observed on the bed of an elderly organic brain syndrome patient. That the Respondent was straddling the patient and holding the patient's wrists down on the bed above the patient's head at which time the Respondent stated to the patient, "stay in bed you prick." (Department Exhibit 1) (Hearing Transcript, October 20, 1993, p. 50)
13. That the Respondent, while working as a registered nurse at Day Kimball Hospital, placed tape across the mouth of an elderly patient to keep the patient from yelling. (Department Exhibits 1, 4) (Respondent's Exhibit B-6) (Hearing Transcript, September 23, 1993, p. 45)
14. That the Respondent, while working as a registered nurse at Day Kimball Hospital, stated, "I am going to kill you" to an elderly patient who repeatedly begged to be killed. (Hearing Transcript, September 23, 1993, pp. 31-32)

15. That the Respondent, while working as a registered nurse at Day Kimball Hospital, repeatedly inserted his fingers into the vagina of an elderly female patient after being unable to insert a foley catheter. (Department Exhibit 1) (Respondent's Exhibit B-6) (Hearing Transcript, September 23, 1993, pp. 33-34)
16. That the Respondent, while working as a registered nurse at Day Kimball Hospital, assisted Nancy Rondeau, L.P.N., in cleaning an elderly female patient who was incontinent. That the Respondent, while assisting Nurse Rondeau, proceeded to unnecessarily lift the patient's leg over his (Respondent's) shoulder causing the patient to cry from pain. (Respondent's Exhibit B-11) (Hearing Transcript, October 20, 1993, pp. 6-7, 21)
17. That on or about November 1, 1991, while working as a registered nurse at Day Kimball Hospital, the Respondent deliberately and forcefully threw a pillow in the face of an elderly male patient. (Department Exhibits 1 and 4) (Respondent's Exhibits B-6 and B-11) (Hearing Transcript, September 23, 1993, pp. 27-29, 48) (Hearing Transcript, October 20, 1993, p. 5)
18. That the Respondent, while working as a registered nurse at Day Kimball Hospital, would pretend to drop deceased patients while in the process of transferring them to morgue stretchers. (Respondent's Exhibit B-3) (Hearing Transcript, October 20, 1993, p. 74)
19. That the Respondent, while working as a registered nurse at Day Kimball Hospital, would pull bed sheets over the faces of living patients in the manner done for deceased patients. (Hearing Transcript, September 23, 1993, pp. 29-30)
20. That the Respondent, while working as a registered nurse at Day Kimball Hospital, inappropriately touched patient care technician JoAnn Lussier on numerous occasions, inclusive of pushing his pelvis against hers, placing his hands on her buttocks, untying her scrub dress, rubbing her back with his hands and commenting on her bra closure. (Department Exhibits 1, 4) (Respondent's Exhibit B-6) (Hearing Transcript, September 23, 1993, pp. 35-36) (Hearing Transcript, March 10, 1994, p. 92) Sometimes the Respondent's actions occurred while JoAnn

Lussier was giving care to patients. (Hearing Transcript, September 23, 1993, p. 35)

21. That on or about November 1991 the Respondent, while working as a registered nurse at Day Kimball Hospital in the capacity of a clinical coordinator, conducted a performance evaluation of JoAnn Lussier during which he stated to her "Since I can't get the shirt off your chest, is there anything else you'd like to get off your chest". (Hearing Transcript, March 10, 1994, p. 55)
22. That on or about 1990 the Respondent on approximately three occasions, while working as a registered nurse and clinical coordinator at Day Kimball Hospital, inappropriately rubbed the back of Robin Thompson, R.N., primarily in the area of her bra strap. (Department Exhibit 1) (Hearing Transcript, October 20, 1993, pp. 34-36) The Respondent did not repeat this conduct with Ms. Thompson after she told him it was not appropriate. (Hearing Transcript, October 20, 1993, pp. 43-44)
23. That the Respondent, while working as a registered nurse at Day Kimball Hospital, on numerous occasions attempted to touch and rub the back of Melissa Cowen, R.N., despite her telling him not to do so. That on one occasion the Respondent lured Ms. Cowen into a patient's room, and told her he just wanted to be alone with her. (Respondent's Exhibit B-3)
24. That the Respondent, while working as a registered nurse at Day Kimball Hospital in the capacity of clinical coordinator, approached Elaine Lucier, R.N. while she was giving care to a patient and inappropriately proceeded to rub her back and place his hand under her shirt. That while in the patient's room the Respondent proceeded to rub his pelvis against Ms. Lucier. The Respondent did not repeat this conduct with Ms. Lucier after she told him not to do it again. (Hearing Transcript, October 20, 1993, pp. 52-53)
25. That the Respondent, while working as a registered nurse at Day Kimball Hospital, approached Lauren Mooney, R.N. and inappropriately pinched her on the right side near her bra line. (Department Exhibit 1) (Hearing Transcript, October 20, 1993, p. 67)

26. That the Respondent, while working as a registered nurse at Day Kimball Hospital, would rub the shoulder and brush up against Linda Patten, R.N. The Respondent stopped this conduct when Ms. Patten told him it was not appropriate. (Respondent's Exhibit B-7)
27. That the Respondent, while working as a registered nurse at Day Kimball Hospital, attempted to put his arm around the waist of Janet Quinn, R.N. while at a patient's bedside. (Respondent's Exhibit B-9)
28. That the Respondent, while working as a registered nurse and clinical coordinator at Day Kimball Hospital, brushed his pelvis against Cathy Wilcox, R.N. while she was attending to a patient and the Respondent frequently put his hand on her knee during a performance evaluation. (Respondent's Exhibit B-17)
29. That Jeff Schwend, R.N. observed the Respondent, while working as a registered nurse at Day Kimball Hospital, grab the buttocks of a female nurse. (Hearing Transcript, March 10, 1994, pp. 16-17)
30. That the Respondent, while working as a registered nurse and clinical coordinator at Day Kimball Hospital, frequently touched or attempted to touch female staff in an inappropriate manner and frequently made inappropriate comments of a sexual nature to or about female staff. (Department Exhibit 1) (Respondent's Exhibit B) (Hearing Transcript October 20, 1993, pp. 7-8, 36-37, 70-71, 74-75) (Hearing Transcript March 10, 1994, pp. 16-21)
31. That the incidents of the Respondent's abusive conduct towards patients were not reported to the administration of Day Kimball Hospital in a timely fashion. (Hearing Transcripts September 23, 1993, p. 43) (Hearing Transcript October 20, 1993, pp. 13, 39, 54, 60, 85) (Hearing Transcript, November 17, 1993, pp. 75-76)

32. That the incidents of the Respondent's conduct towards female staff were not reported to the administration of Day Kimball Hospital in a timely fashion. (Hearing Transcripts September 23, 1993, p. 40) (Hearing Transcript, October 20, 1993, p. 10)
33. That female staff members of Day Kimball Hospital Unit East One expressed fear that the Respondent would cause them physical harm, or that he could cause them to receive poor performance evaluations or lose their employment at Day Kimball Hospital if they reported the incidents of the Respondent's abusive conduct towards patients and/or the Respondent's harassing conduct towards female staff. (Respondent's Exhibits B-3, B-6, B-13, B-17) (Hearing Transcript, October 20, 1993, pp. 39-40) (Hearing Transcript, March 10, 1994, pp. 26-27)
34. That the Respondent's employment at Day Kimball Hospital was terminated on or about November 1991. (Department Exhibit 1) (Hearing Transcript, March 10, 1994, p. 40)

DISCUSSION AND CONCLUSIONS

In consideration of the above Findings of Fact, the following conclusions are rendered:

William Zajac held a valid registered nurse license in the State of Connecticut at all times referenced in the Statement of Charges.

The Notice of Hearing and Statement of Charges sufficiently provided information as mandated by the General Statutes of Connecticut §4-177 and §4-182.

The hearing was held in accordance with Chapters 54 and 368a of the General Statutes of Connecticut as well as §§19-2a-1 through 19-2a-30 of the Regulations of Connecticut State Agencies. The Notice of Hearing, Statement of Charges and the hearing process provided the Respondent with the opportunity to demonstrate compliance with all lawful requirements for the retention of his license as required by the General Statutes of Connecticut §4-182(c).

The FIRST COUNT Paragraph 3 of the Statement of Charges alleges that from on or about April 1988 and subsequent thereto, while employed as a registered nurse at Day Kimball Hospital, Putnam, Connecticut, the Respondent physically and/or sexually abused elderly patients in one or more of the following ways:

- "a. he placed stroke victims face down in their beds; and/or
- b. he threw a pillow at one patient; and/or
- c. he repeatedly inserted his fingers into the vagina of an elderly patient after he was unable to insert a foley catheter; and/or
- d. he sat on an Organic Brain Syndrome patient in an apparent effort to restrain said patient, and said "stay in bed, you prick": and/or
- e. he made intimidating gestures to patient and physically overpowered them, which increased their agitation."

The Respondent denies these charges. (Answer: Hearing Transcript, September 23, 1993, p. 14)

With regard to the First Count Paragraph 3a, the Board finds that the Department presented no evidence to prove this charge. Therefore, the First Count Paragraph 3a is dismissed.

With regard to the First Count Paragraphs 3b, 3c, 3d and 3e the Board considered the documents submitted into evidence and the credible testimony of the witnesses who testified to these allegations.

The Respondent argues that because the incidents of alleged patient abuse were not reported to the hospital administration in a timely fashion, the incidents did not occur or did not occur in the manner as recollected by the Department's witnesses. (Respondent's Hearing Brief/Memorandum of Law)

The Board has found that staff members of Day Kimball Hospital expressed fear of retribution from the Respondent if incidents of the Respondent's alleged abuse of patients were reported (FACT 33). The Board concludes that this fear hindered the timely reporting of these incidents.

Although the Board does not condone the failure to timely report the incidents of alleged patient abuse, the Board does not construe that this failure to report these incidents diminishes the credibility or recollection of the witnesses. The Board does not find the Respondent's argument to be convincing nor does it find the Respondent's testimony denying these charges to be credible.

Based on its findings the Board concludes that there exists overwhelming evidence that the Respondent repeatedly physically and/or verbally abused elderly patients while he worked as a registered nurse at Day Kimball Hospital.

The General Statutes of Connecticut §20-99(b) prohibits conduct which fails to conform to the accepted standards of the nursing profession, which includes "... (2) illegal conduct, incompetence or negligence in carrying out using nursing functions...."

The Board concludes that the Respondent's conduct as specified in the First Count Paragraphs 3b, 3c, 3d and 3e is proven and that said conduct violates the General Statutes of Connecticut §20-99(b)(2). Therefore, the Respondent is subject to disciplinary action pursuant to §19a-17 of the General Statutes of Connecticut.

The SECOND COUNT of the Statement of Charges alleges that from on or about April 1988 and subsequent thereto, while employed as a registered nurse at Day Kimball Hospital, Putnam, Connecticut, the Respondent made sexually harassing and inappropriate gestures and/or comments to staff.

The Respondent denies these charges. (Answer: Hearing Transcript, September 23, 1993, p. 14)

With regard to the Second Count the Board considered the documents submitted into evidence, the credible testimony of the witnesses who testified to these allegations and the corroborating testimony of the Respondent.

The Respondent argues that because the incidents of alleged sexually harassing conduct were not reported to the hospital administration in a timely fashion, despite a hospital policy for reporting and investigating such incidents, these allegations should be disregarded. (Respondent's Hearing Brief/Memorandum of Law)

Credible testimony was presented that the staff members who were subjected to the alleged sexually harassing conduct by the Respondent expressed a fear of the Respondent and/or embarrassment if the alleged conduct was reported (FACT 33). The Board concludes that although this fear hindered the timely reporting of the Respondent's conduct, it does not require that the allegations of sexually harassing conduct must be disregarded.

The Respondent further argues that charges of sexual harassment are not within the Board's jurisdiction. (Respondent's Hearing Brief/Memorandum of Law) The Board disagrees.

The statutory authority for determining appropriate professional conduct of nurses rests with the Board. The General Statutes of Connecticut §20-99(a) states:

The board of examiners for nursing shall have jurisdiction to hear all charges of conduct which fails to conform to the accepted standards of the nursing profession brought against persons licensed to practice nursing....

Although a specific conduct may be within the jurisdiction of another state agency and/or Court, the Board is not precluded from determining whether the conduct violates the standards of the nursing profession and is not precluded from imposing disciplinary action against the nursing license of the individual engaged in such conduct, if warranted.

Based on its findings the Board concludes that there exists overwhelming evidence that the Respondent, while working as a registered nurse and in a supervisory capacity, inappropriately touched and made sexually suggestive comments towards female staff at Day Kimball Hospital. The Board further concludes the Respondent's conduct was detrimental to the care rendered by staff subjected to the Respondent's conduct.

The General Statutes of Connecticut §20-99(b) prohibits conduct which fails to conform to the accepted standards of the nursing profession.

The Board concludes that the Respondent's conduct as specified in the Second Count is proven and that said conduct fails to conform to the accepted standards of the nursing profession. Therefore, the Respondent is subject to disciplinary action pursuant to §19a-17 of the General Statutes of Connecticut.

The THIRD COUNT of the Statement of Charges alleges that between April and October 1988, while employed as a registered nurse at Day Kimball Hospital, the Respondent impersonated a physician during a phone conversation with Rhonda Brouillard and made sexually inappropriate comments to Rhonda Brouillard during the conversation.

The Respondent admits these charges. (Answer: Hearing Transcript, September 23, 1994, p. 14)

Based on its findings and the Respondent's admission the Board concludes that the Respondent impersonated a physician and made sexually inappropriate comments to Rhonda Brouillard, R.N. Testimony was presented that the Respondent apologized to Rhonda Brouillard concerning this incident. The Board finds that the fact the Respondent apologized is irrelevant, and does not negate the conduct which occurred.

The General Statutes of Connecticut §20-99(b) prohibits conduct which fails to conform to the accepted standards of the nursing profession.

The Board concludes that the Respondent's conduct as specified in the Third Count is proven and that said conduct fails to conform to the accepted standards of the nursing profession. Therefore, the Respondent is subject to disciplinary action pursuant to §19a-17 of the General Statutes of Connecticut.

Throughout the Statement of Charges the Department alleges that the Respondent's conduct is a result of the Respondent suffering from an emotional disorder or mental illness and therefore a violation of the General Statutes of Connecticut §20-99(b)(4). (First Count, Paragraph 4(b); Second Count, Paragraph 4(b); and Third Count Paragraph 5(b))

The Board found that no evidence was presented to prove this allegation. Therefore, the charge that the Respondent suffers from an emotional disorder or mental illness is dismissed.

ORDER

Pursuant to its authority under §19a-17 and §20-99 of the General Statutes of Connecticut, the Board of Examiners for Nursing hereby orders:

1. That for the First Count, the Second Count and the Third Count the Respondent's registered nurse license, No. R41384, be revoked.
2. Revocation shall become effective on the date this Memorandum of Decision is signed by the Chairperson of the Board of Examiners for Nursing.

The Board of Examiners for Nursing finds the misconduct regarding the First Count, Second Count and the Third Count is severable and each specific offense warrants the disciplinary action imposed. The Board of Examiners for Nursing hereby informs the Respondent, William Zajac and the Department of Public Health and Addiction Services of the State of Connecticut of this decision.

Dated at Hartford, Connecticut this 21st day of September, 1994.

BOARD OF EXAMINERS FOR NURSING

By

Janice Thibodeau

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